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SUBJECT: IRAQI WOMEN STRUGGLE OVER HOW BEST TO ENSURE THEIR
RIGHTS

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Classified By: Classified by Acting Political Counselor John Fox for re
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Summary

11. (C) Sunni and Kurdish women Parliamentary leaders are pushing Parliament's Constitutional Review Committee (CRC) to amend Article 41 of the Iraqi Constitution to strike language stipulating that the personal status of Iraqis is determined by their religion and sect. These MPs fear that if it is not amended, Article 41 will eventually provide the legal basis for overturning Law 188, Iraq's current personal status law, which includes numerous protections for women in matters relating to marriage, divorce, inheritance, and child custody. Women MPs in Iraq's Shi'a Islamic parties have a different view. They see Law 188, promulgated in 1959, as "Communist" and contrary to Shia Islamic law. For pro-Law 188 MPs, the constitutional review process is the last best chance to amend Article 41, since the parliamentary approval requirement for CRC-proposed amendments is an absolute majority as opposed to the two-thirds requirement that will go into effect after the CRC process concludes. However, advocates of amending Article 41 face very difficult odds in this election year, with opposition from the main Shi'a Islamic parties Dawa, ISCI, and the Sadrists. This debate has heated up recently because the CRC plans to complete its work in the coming weeks, but the larger argument -- should personal status be civilly or religiously based -- has been going on for many years. End summary.

The Constitutional Review Process and Article 41

12. (U) Per ref A, the 27-member Constitutional Review Committee (CRC) of the Iraqi Parliament -- a body established by Article 142 of the Iraqi Constitution -- has been trying on and off for the past four years to draft a package of amendments to the Iraqi Constitution. The Committee appears to be heading into the final weeks of deliberation, reportedly having already agreed to approximately 50 amendments, with a few still to be debated. Once the CRC passes its amendments to the full Parliament, approval will require an absolute majority vote in the Parliament and then ratification in a national referendum. (Note: We will provide an update on the CRC's recent activities septel. End note.) Once this process is complete, the CRC will be dissolved and all future Constitutional amendments will require the approval of two-thirds of the Iraqi Parliament plus a national referendum, assuming the current provision regarding amendments, Article 126, remains as is.

13. (C) In separate meetings, several women MPs, including Shatha al-Obosi (Tawafuq, Human Rights Committee), Ala Talabani (PUK, Head of Civil Society Committee), Dr. Nada

Ibrahim (National Dialogue Front, Women's Committee), and Maysoon al-Damluji (INL, Women's Committee) told Poloff that they are pushing the CRC to alter Article 41 of the Iraqi Constitution to remove the language that gives every Iraqi citizen choice as to how his or her personal status will be determined, based on his or her religion and sect. At present, Article 41 of the Iraqi Constitution states that "Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law." These women MPs are proposing to replace that language with a guarantee to organize personal status by law, which would ostensibly guarantee the continuation of Law 188.

Law 188: The Bedrock of Iraqi Women's Rights

¶4. (C) Despite its having been part of the Iraqi Constitution for the past four years, all four MPs told Poloff that if Article 41 is allowed to survive the Article 142 constitutional amendment process unchanged, and thus becomes a permanent feature of the constitution, it would eventually be used as the legal basis for undermining the current personal status law, Law 188. They argued that Law 188, which dates from 1959, includes numerous protections for women in matters relating to marriage, divorce, inheritance and child custody. Dr. Ibrahim told Poloff that there was wide consensus among educated Iraqis that Law 188 was the best law in the Middle East with respect to women's rights because it incorporated the most protective elements for women from the four schools of Sunni Islamic jurisprudence,

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as well as Shi'a religious law. Al-Obosi dismissed criticism that Law 188 was not adequately Islamic, noting that "90% of it is based on Sharia." (Note: Members of Iraq's Christian community are currently drafting a separate personal status law for themselves because they do not like many of the Islamic provisions of Law 188 (ref B). End note.)

Opposition to Law 188

¶5. (C) In explaining who was in favor of having personal status determined by religion and sect rather than by Law 188, Ala Talabani told Poloff that Shi'a Islamic parties within Parliament viewed Law 188 as "Communist" and thus wanted it abolished. Al-Obosi was more specific, stating that the Dawa party wants Article 41 as is and that it is willing to "fight" for it. Salma Jabou, the head of the Development and Training Widows Center NGO and wife of Deputy Foreign Minister Labid Abbawi, said that the proposed amendment went as far back as the early 1960s when Ayatollah Muhsen al-Hakim, father of current ISCI leader Abdul Aziz al-Hakim, tried unsuccessfully to have Law 188 repealed. The debate emerged once again during the days of the Iraqi Governing Council. Jabou, Ibrahim, Talabani, and Damluji also relayed the story of how on December 31, 2003, Abdul Aziz al-Hakim had repealed Law 188 on the last day of his term as President of the Iraqi Governing Council, only to have his decision overturned by his successor, Adnan Pachachi. The political struggle over the current Article 41 has been ongoing since its insertion into the Iraqi Constitution four years ago.

The Debate over the Consequences of Law 188's Demise

¶6. (C) Al-Obosi, Talabani, Ibrahim, and Damluji each warned that abrogation of Law 188 would lead to a system in which every Iraqi's personal status was determined by religion and sect, which would lead to "judicial anarchy." They argued that Article 41 will eventually require courts for each of

the four schools of Sunni Islamic jurisprudence, plus another system for the Shi'a, and others that would deal with minority groups on issues related to marriage, divorce, inheritance, and child custody. They worried that a system with so many competing regulations governing these issues would be naturally disadvantageous to women as men would seek to use the court of the sect most advantageous to them.

Talabani was more specific in her concern that, if personal status of Iraqi citizens was based on religion, it would undermine statutes that prevent children under the age of 18 from being married. She worried that girls as young as 13 would be forced to marry if Law 188 was abrogated and personal status decisions devolved to religious authorities.

¶ 17. (C) As a supporter of the unamended Article 41, Dr. Samira al-Musawi (UIA, Head of the Women and Children's Committee) dismissed these worst-case scenarios, arguing that any Iraqi couple would first have to agree under which sect's rules they would be married and that all subsequent decisions regarding this couple would have to be adjudicated by this sect and no other. She also dismissed Law 188 as having been put in place by an unelected government and said that, because Law 188 drew upon Sunni schools of Islamic jurisprudence, it was unfair to the Shia who wanted to be governed by their own religious law. The acting Minister of State for Women's Affairs, Dr. Khulud al-Majun, seconded this idea, telling Poloff that if anything, Article 41 gave Iraqis Qidea, telling Poloff that if anything, Article 41 gave Iraqis more freedom, not less. Dr. al-Majun also argued that separate religious courts were unnecessary because every Iraqi judge was already an expert in all of the schools of Islamic law and could simply apply the one that was requested by those seeking to be married or divorced.

Division Within the Women's Caucus

¶ 18. (C) In a press release dated May 14, a group of eight women MPs including al-Obosi, Damlugi, Tania Gilly (PUK), Kamila Ibrahim Badi (KDP), Judge Zakia Haki (Independent Kurd), Asma Adnan (Tawafuq), Alia Naseef Jasim (INL), and Samia Azeez (PUK) publicly raised their concerns, stating that Article 41 as it stands will "open the door for arbitrary Fatwas affecting the destinies of families, which will lead to the disintegration of families and consolidate sectarianism." On June 8, Damluji told Poloff that the petition released to the press on May 14 had gained 70 signatures within the Parliament. Following up on the press release, Zakia Hakki, Iraq's first female judge, took to the airwaves on Al Hurra on June 1 to raise her concerns again on

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Article 41. On June 4, NGO leader Salma Jabou told Poloff that she had hosted a group of women MPs in her home the night before to discuss Article 41, but that no consensus had been reached. Damluji told Poloff that she had hosted a conference on June 13 that involved judges, the head of the Lawyers Union, and several MPs, with the objective of generating as much press attention to the issue as possible. On the flip side, Dr. al-Musawi was downcast when she explained to Poloff that, as the head of the Women's Committee in Parliament, she had been unsuccessful in forging a compromise among women MPs concerning the article and how best to amend it. She said that she had listened to everyone, but that the range of opinions was too wide to allow consensus.

¶ 19. (C) In response to a query from Poloff, Dr. Ibrahim, Talabani, and Damluji were extremely pessimistic that their efforts to amend Article 41 would succeed. Dr. Ibrahim said that the effort had the support of the Kurdish coalition, Tawafuq, the National Dialogue Front, the Iraqi National List and a few Sadrists. Nevertheless, the push from Dawa, ISCI and the vast majority of the Sadrists, along with votes that this bloc would be able to peel away from the Kurdish

coalition, would be too great an obstacle to overcome. We
will continue to monitor these political dynamics closely.
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